

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7212

GEORGE H. BRISBANE, SR.,

Petitioner - Appellant,

v.

WARDEN TIMOTHY STEWART,

Respondent - Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Richard D. Bennett, District Judge. (1:13-cv-02001-RDB)

Submitted: October 22, 2013

Decided: October 25, 2013

Before WILKINSON, NIEMEYER, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

George H. Brisbane, Sr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

George H. Brisbane, Sr., seeks to appeal the district court's order construing his 28 U.S.C. § 2241 (2006) petition as a successive but unauthorized motion under 28 U.S.C.A. § 2255 (West Supp. 2013) and dismissing it without prejudice for lack of jurisdiction. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2006). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2006). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Brisbane has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal

contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED